

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,  
Plaintiff,  
v.  
SACRAMENTO COUNTY SHERIFF,  
Defendant.

No. 2:15-cv-1123 MCE CKD PS

## ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed a document which the court will construe as an amended complaint.

The federal *in forma pauperis* statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

1           In order to avoid dismissal for failure to state a claim a complaint must contain more than  
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim  
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.  
9 at 1949. When considering whether a complaint states a claim upon which relief can be granted,  
10 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
11 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
12 U.S. 232, 236 (1974).

13           Plaintiff has filed a document in which he requests reparation. ECF No. 4. The court will  
14 construe the document as an amended complaint. The court finds the allegations in plaintiff’s  
15 amended complaint so vague and conclusory that it is unable to determine whether the current  
16 action is frivolous or fails to state a claim for relief. The court has determined that the amended  
17 complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).  
18 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice  
19 and state the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency,  
20 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity  
21 overt acts which defendants engaged in that support plaintiff’s claim. Id. Because plaintiff has  
22 failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the amended complaint must be  
23 dismissed. The court will, however, grant leave to file a second amended complaint.

24           If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional  
25 grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a).  
26 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation  
27 of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

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1 It appears that plaintiff may be trying to state a claim for violation of his civil rights.

2 Plaintiff is advised that the Civil Rights Act provides as follows:

3 Every person who, under color of [state law] . . . subjects, or causes  
4 to be subjected, any citizen of the United States . . . to the  
deprivation of any rights, privileges, or immunities secured by the  
5 Constitution . . . shall be liable to the party injured in an action at  
law, suit in equity, or other proper proceeding for redress.

6 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
7 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
8 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
9 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
10 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
11 omits to perform an act which he is legally required to do that causes the deprivation of which  
12 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

13 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
14 their employees under a theory of respondeat superior and, therefore, when a named defendant  
15 holds a supervisorial position, the causal link between him and the claimed constitutional  
16 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
17 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). Vague  
18 and conclusory allegations concerning the involvement of official personnel in civil rights  
19 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
21 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended  
22 complaint be complete in itself without reference to any prior pleading. This is because, as a  
23 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
24 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
25 longer serves any function in the case. Therefore, in an amended complaint, as in an  
26 original complaint, each claim and the involvement of each defendant must be sufficiently  
27 alleged.

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1                   In accordance with the above, IT IS HEREBY ORDERED that:

2                   1. Plaintiff's request for reparation (ECF No. 4) is construed as a first amended

3                   complaint;

4                   2. Plaintiff's amended complaint is dismissed; and

5                   3. Plaintiff is granted thirty days from the date of service of this order to file a second

6                   amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,

7                   and the Local Rules of Practice; the second amended complaint must bear the docket number

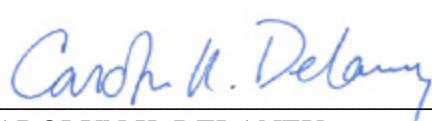
8                   assigned this case and must be labeled "Second Amended Complaint"; plaintiff must file an

9                   original and two copies of the second amended complaint; failure to file a second amended

10                  complaint in accordance with this order will result in a recommendation that this action be

11                  dismissed.

12                  Dated: June 18, 2015



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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